IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9416 OF 2003

Smt. Nalini Madhukar Godbole ... Petitioner

V/s

Shri Ramchandra P. Medhekar ... Respondent

Mr. S.V. Pitre for the petitioner.

Mr. V.G. Mujumdar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 13TH MARCH, 2006

P.C.:

1. Heard.

2. Rule. Rule made returnable forthwith by consent.

3. A very short question is involved in this petition and hence the matter is taken up and disposed of finally.

4. The petitioner has challenged the order dated 29.9.2003 passed by the Addl. District Judge rejecting the application under Order 41 Rule 27 of the Code of

Civil Procedure for bringing on record the additional evidence, which, according to the petitioner was very much relevant and has bearing over the dispute before the Court.

5. The plaintiff-petitioner filed the suit against the defendant for getting peaceful and vacant possession of the suit premises inter-alia submitting that the premises required reasonably and bonafide for plaintiff's use and occupation. The plaintiff has also contended that the defendant has acquired suitable residential accmmomdation and, as such, the subsequent events which came to the notice of the plaintiff pending the appeal were required to be brought on record for which purpose the application under Order 41 Rule 27 of Code of Civil Procedure preferred.

6. The lower appellate Court, after hearing both parties, was of the view that no much weight could be given to the subsequent events and, as such, the application came to be dismissed. Hence the present petition.

7. In this regard, it must be noted that previously also in this dispute, Writ Petition No. 1784 of 2003

came to be filed in this Court on the similar aspect wherein application under Order 41 Rule 27 of the Code of Civil Procedure was rejected and this Court sent back the application to the lower appellate Court with direction to decide the application on the basis of the principles required to be kept in mind for allowing the production of additional evidence within the meaning of Order 41 Rule 27 of the C.P.C. and further direction that the application should be adjudicated expeditiously as early as possible and disposed of the writ petition. On that back ground it was thought fit by the petitioner to seek amendment of the pleadings in order to bring the subsequent events on record. The perusal of the application filed by the petitioner under Order 6 Rule 17 of the C.P.C. makes it clear that the amendment which was sought for was restricted to the said subsequent events in order to show that the defendant had acquired suitable alternative accommodation and did not therefore require the said premises any more. The said application, after hearing both parties, came to be rejected by order dated 29.9.2003 and by the said impugned order the application under Order 41 Rule 27 of the C.P.C. also came to be rejected with the observations noted above.

8. In my considered view, there was no reason for the lower appellate Court for rejecting the application under Order 41 Rule 27 of the C.P.C. The learned counsel for the petitioner sought to put reliance on the ruling of the Apex Court in the case of **Om Prakash Gupta v/s Ranbir B. Goyal, reported in (2002) 2 SCC 256** wherein it was held that the subsequent events can be taken cognizance of only if Court's attention is invited towards them according to established rules of procedure so that the pre-requisites of affording the opposite party an opportunity of meeting the new case and of determining the real questions in controversy are fulfilled. This was the reason why the application for amendment of the plaint came to be filed. The Apex Court has also observed that the Court has power to take note of and mould relief as appropriate but only if three conditions are satisfied-

(i) relief, as originally claimed has become inappropriate or impossible to grant;

(ii) taking note of such events or changed circumstances would lead to early end of the litigation and would result in complete justice being done; and

(iii) subsequent events are brought to notice of Court promptly and in accordance with rules of procedure to ensure that opposite party is not taken by surprise.

In my considered view, the ratio laid down by this ruling of the Supreme Court is fairly applicable to the present case and, therefore, I hold that the petition deserves to be allowed. Hence the Rule is made absolute.

9. The order passed by the lower appellate Court dated 29.9.2003 rejecting the application under Orfder 41 Rule 27 of the C.P.C. is hereby set aside.

The lower appellate Court is directed to consider the application in proper perspective alongwith the application for amendment and may further consider the question whether the matter is required to be remanded to the Trial Court with time bound programme so as to give opportunity to other side to file additional written statement, if any, and to raise relevant issues and further give opportunity to both sides to lead evidence, if any.

With these directions, the petition stands disposed of.

The amendment to be carried out within four weeks from the date of this order.

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